

EXHIBIT C

J816DYNC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 HSIEH LIANG YEH,

4 Plaintiff,

5 v.

18 CV 6018(PAE)

6 HAN DYNASTY, INC., et al.,

7 Defendants.

8
9 New York, N.Y.
August 1, 2019
4:30 p.m.

10 Before:

11 HON. PAUL A. ENGELMAYER,

12 District Judge

13 APPEARANCES

14 AARON B. SCHWEITZER
15 Attorney for Plaintiff

16 WILLIAM H. NG
17 Attorney for Defendants

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(Case called)

MR. SCHWEITZER: Good afternoon, your Honor. Aaron Schweitzer for the plaintiff, Mr. Yeh.

THE COURT: Good afternoon.

MR. NG: Good afternoon, your Honor. William Ng for the defendants.

THE COURT: Good afternoon. You may be seated.

This conference has been on the calendar for some time. I set it in connection with the approval of the case management plan back in February. I set the conference originally for two days ago, July the 29th, but I was recently asked and happy to accommodate the request to advance it by two days. The purpose of conference as covered at the initial conference is a postdiscovery conference to take up any potential applications for leave to file summary judgment motions or to alternatively to set a schedule for trial.

In reviewing the submission that was made just a few days ago, I noted there seems to be a bit of confusion here. The case management plan provided for the end of fact discovery on June the 28th. Judge Pitman in his order on July 3rd allowed discovery to continue to July 12th for the single purpose of permitting the deposition of the plaintiff. I am unable to find on the record any application to me or to Judge Pitman to authorize any otherwise discovery to be taken out of time. From my perspective discovery is closed and we're now

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1 moving forward in the case.

2 Plaintiff, there seems to be some attempt in the
3 letter that you submitted to arrogate to yourself the right to
4 simply take discovery out of time, but has any court authorized
5 that?

6 MR. SCHWEITZER: Prior to making the application
7 before your Honor, we were trying to resolve the issue of
8 getting a discovery extension --

9 THE COURT: Answer my question. Discovery ended
10 June 28th. Apart from the application to Judge Pitman with
11 respect to the plaintiff's deposition, was any application made
12 to any judge to extend discovery past June the 28th?

13 MR. SCHWEITZER: No, your Honor.

14 THE COURT: That answers the question, doesn't it?

15 It is not the wild west. You cannot just decide you
16 are going to take discovery out of time. This conference is
17 here as a postdiscovery conference to discuss summary judgment
18 motion had someone written a premotion letter. Nobody did
19 that. So it is to set a trial date. Discovery is over. I
20 just don't understand what you have in mind here.

21 MR. SCHWEITZER: The only additional discovery we
22 would be seeking is the depositions of 30(b)(6) witnesses of
23 the corporation.

24 THE COURT: Right. You had four months to do that, or
25 you had the opportunity within the discovery period to seek an

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1 extension for that. I realize you may be standing in for
2 Mr. Troy, but nobody sought permission for that. The answer is
3 no. If that had mattered to you, you would have sought that
4 during the discovery period. This is the Southern District of
5 New York.

6 MR. SCHWEITZER: Understood.

7 THE COURT: Let me sort of take stock where we are.
8 We're done with discovery. If there are outstanding
9 photocopying to be done, I am not getting in the way of that
10 being turned over, but to say the only discovery that remains
11 to be done is deposition discovery is facetious.

12 How many depositions have you taken so far in this
13 case?

14 MR. SCHWEITZER: We took one and the other side took
15 one.

16 THE COURT: How many depositions are you saying are
17 just remaining?

18 MR. SCHWEITZER: We had originally noticed depositions
19 for the individual defendant as well as four 30(b)(6). During
20 the deposition during of the defendant, she had identified a
21 number of people who may or may not have knowledge. We had
22 sought to -- we had given the defense counsel a request that
23 they be identified fully. That was on -- that has not been
24 responded to.

25 THE COURT: Look, all I can say is my individual rules

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1 provide a mechanism for resolving discovery disputes. If you
2 felt within the discovery period that something you were
3 seeking was not being heeded, you knew to go to me or you knew
4 to go to Judge Pitman as in fact the defense did with respect
5 to the deposition of the plaintiff. Either you took one
6 deposition and you now would like to take more, the deadline
7 past. I regret to say this but deadlines matter. You need to
8 play within the rules.

9 MR. SCHWEITZER: I understand, Judge. We had tried to
10 resolved it amicably and failed.

11 THE COURT: Do you understand that if you actually
12 envisioned that discovery was a rolling process, the whole
13 purpose for this conference would have been moot. The purpose
14 of the conference as I covered at the initial conference is as
15 a postdiscovery case management conference either to take up
16 anticipated summary judgment motions or to discuss trial. If
17 you really were still in progress in the middle of discovery,
18 the purpose for this conference would be unattainable.

19 MR. SCHWEITZER: Understood, your Honor.

20 THE COURT: As it happens, I understand that there
21 seem to be some disputes among other matters, but the purpose
22 of the conference was for the reason I stated. You had no
23 business just sort of asking me to check in with you in the
24 middle of what you thought was discovery process outside the
25 deadline without extending it. Okay?

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1 MR. SCHWEITZER: Yes.

2 THE COURT: How many plaintiffs are there in the case?

3 MR. SCHWEITZER: Single-plaintiff case.

4 THE COURT: I understand at some point you had in mind
5 the idea of conditional certification.

6 MR. SCHWEITZER: There is currently a motion pending.

7 THE COURT: I am going to deny that motion. The other
8 workers need a lawyer who will be heeding deadlines and taking
9 discovery. I have to tell you that I have a fiduciary
10 obligation as a judge in any collective or conditional cert
11 context to make sure that the people who are being added into
12 this case are ably represented. In this case counsel blew the
13 deadline for the 30(b)(6), didn't take the other depositions
14 and didn't heed the Court's rules. These other employees might
15 or night not be better off going pro se, but they can do better
16 by way of law firm than this. I am not going put my weight
17 behind certifying a collective where the premise is they are
18 going to be represented by a lawyer that misses central
19 deadlines. I cannot do that.

20 So where we are at is we have Yeh v. Han Dynasty. How
21 long will that case take to try?

22 MR. SCHWEITZER: Probably no more than three days.

23 THE COURT: Tell me what the evidence would be that
24 would compromise plaintiff's case and what you expect the
25 evidence to show.

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1 MR. SCHWEITZER: We expect the evidence to show that
2 the plaintiff was paid a flatly month rate and that he was not
3 subject to any overtime.

4 THE COURT: Speak a little more loudly and slowly.

5 MR. SCHWEITZER: I apologize, your Honor. It hurts to
6 talk.

7 THE COURT: Just feel free to sit down. Get the
8 microphone closer to you and do what you can to speak.

9 MR. SCHWEITZER: Thank you, your Honor.

10 the Evidence will show that the plaintiff was a --

11 THE COURT: A little too close. Move back.

12 MR. SCHWEITZER: -- nonexempt manual worker, that he
13 was paid a flat monthly rate and was not paid overtime.

14 THE COURT: What was the flat monthly rate?

15 MR. SCHWEITZER: The flat monthly rate began at 3600 a
16 month. It rose to 4,000 a month during his employment.

17 THE COURT: Do you know what his hours were?

18 MR. SCHWEITZER: Yes. They were well in excess of 40.
19 They were in the realm of high 50s.

20 THE COURT: So in a particular month, he might have
21 worked 240 hours or so?

22 MR. SCHWEITZER: Something like that.

23 THE COURT: High 50s times four plus three other days?

24 MR. SCHWEITZER: Yes.

25 THE COURT: We're talking about 240 hours. That would

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1 be over the minimum wage; right? In other words, this is an
2 overtime claim, not a minimum wage claim?

3 MR. SCHWEITZER: That's correct, your Honor.

4 THE COURT: There are circumstances under which an
5 employer can lawfully pay on a flat monthly basis without
6 running afoul of overtime. Just refresh my memory. I am aware
7 that there are certain hoops that the employer has to go
8 through for that to be lawful. Just remind me what the legal
9 structure is when that sort of pay arrangement is used as
10 opposed to when the employer has to pay overtime and when they
11 don't.

12 MR. SCHWEITZER: There was no notice given as to what
13 his wage rate would be in this case. The defense in this case
14 is that the plaintiff was -- fell under the executive
15 exception.

16 THE COURT: He what?

17 MR. SCHWEITZER: Fell under the executive exemption.

18 THE COURT: Fell what?

19 MR. SCHWEITZER: Under the executive exemption.

20 THE COURT: So the defense is that he was exempt?

21 MR. SCHWEITZER: Yes.

22 THE COURT: Was there a separate defense that assuming
23 no exemption the practice here was compliant for a nonexempt
24 employer?

25 MR. SCHWEITZER: No, there is not.

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1 THE COURT: Remind me, though, in other words let's
2 simplify it and use the \$4,000 because I have a feeling the
3 math will work a little bit better. Let's suppose he is
4 working 240 hours a month and making \$4,000 a month. How would
5 one calculate from your perspective the overtime pay? In other
6 words, you say there is no extra money being paid for the
7 overtime hours. From your perspective how does one go about
8 calculating what the base rate is to calculate overtime?

9 MR. SCHWEITZER: The base rate is calculated by
10 dividing the number of -- excuse me, by dividing the salary per
11 week by the number of hours that the salary was intended to
12 compensate. Here, there was no agreement between the employer
13 and the employee that the salary was intended to compensate
14 anything other than 40 hours. So we would divide the 4,000 a
15 month -- multiply the \$4,000 a month divided by 50 to --

16 THE COURT: 4,000 a month?

17 MR. SCHWEITZER: By 12.

18 THE COURT: By 12.

19 MR. SCHWEITZER: Because that is the number of months
20 in a year and divide that number by 52, the number of weeks in
21 a year to get the weekly --

22 THE COURT: One moment. You are saying we divide
23 4,000 per month by 12. Why do you divide the monthly -- let me
24 get this right. You multiply 4,000 by 12. So that 48,000.
25 That is the amount of the he pay he would get in a year?

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1 MR. SCHWEITZER: Yes. And then you would divide that
2 by 52 to get a weekly rate because it is calculated on a work
3 week.

4 THE COURT: A weekly week of 48,000 over 52 is going
5 to wind up being something like \$950 a week.

6 MR. SCHWEITZER: Something like that.

7 THE COURT: And then?

8 MR. SCHWEITZER: And then you would divide that number
9 by 40 to get his hourly rate.

10 THE COURT: That is going to wind up being about \$44
11 an hour.

12 MR. SCHWEITZER: Yes.

13 THE COURT: I am trying to ballpark the math. You
14 would figure out if he were worked about 15 to 20 hours a week
15 overtime, he would be entitled to --

16 MR. SCHWEITZER: The hourly rate times 1.5 times that
17 number of hours.

18 THE COURT: The damages would in that circumstance in
19 a week in which he worked 55 hours he would be entitled to 15
20 hours times 36, not 15 hours times 12?

21 MR. SCHWEITZER: Yes.

22 THE COURT: And the times 12 would be if this were a
23 fluctuating work-week situation and those preconditions are not
24 here.

25 MR. SCHWEITZER: That's correct.

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1 THE COURT: I understand that is the theory of
2 damages. How does the record reflect that your client worked
3 Han Dynast?

4 MR. SCHWEITZER: He worked from before the limitations
5 period for the FLSA, but during the limitations period he
6 worked from 2015 on until 2017.

7 THE COURT: Is this also brought under New York Labor
8 Law?

9 MR. SCHWEITZER: It is under the New York Labor Law.

10 THE COURT: What is the limitations period there?

11 MR. SCHWEITZER: That would be six years.

12 THE COURT: Putting aside whether it is the FLSA or
13 New York Labor Law, I take it the standard of recovery will be
14 the same?

15 MR. SCHWEITZER: Yes.

16 THE COURT: So how far back do we go under New York
17 labor law? Is it the same? I remember it as being different
18 but also different if you have a claim of a willful violation.
19 I don't know if that is alleged here.

20 MR. SCHWEITZER: The difference in time for willful
21 violations under the FLSA.

22 THE COURT: Difference?

23 MR. SCHWEITZER: It is under the FLSA. It goes from a
24 two-year statute of limitations to three years for willful
25 violation. New York Labor Law is always a six-year statute of

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1 limitations.

2 THE COURT: Why is your focus on the FLSA? Doesn't
3 your client stand to recover more if you use the New York Labor
4 Law measure?

5 MR. SCHWEITZER: Yes, he does. No, I didn't have any
6 particular reason for focusing on the FLSA.

7 THE COURT: In other words, does the FLSA give your
8 client anything that the New York Labor Law doesn't give him?

9 MR. SCHWEITZER: No.

10 THE COURT: SO from your perspective, you can reach
11 back -- when does your client's employment begin? You said
12 before the FLSA, but it seems to me that if you are trying to
13 actually maximize your client's recovery here, you will be
14 looking at the New York Labor Law.

15 MR. SCHWEITZER: That's true, your Honor. I don't
16 remember his exact start time off the top of my head, but it
17 was about five years' worth of employment.

18 THE COURT: When did your client cease employment?

19 MR. SCHWEITZER: In 2017.

20 THE COURT: So it is some period of time going back
21 before 2015 to 2017?

22 MR. SCHWEITZER: Yes.

23 THE COURT: What did your client do for Han Dynast?

24 MR. SCHWEITZER: He was a stir fry cook. He phrased
25 it as fry wok.

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1 THE COURT: He physically did cooking using a wok?

2 MR. SCHWEITZER: Yes.

3 THE COURT: Did he supervise anybody?

4 MR. SCHWEITZER: In a very, very limited way. What
5 happened was sometimes customers would complain that a dish
6 that somebody else cooked was not up their standard or liking.
7 He would instruct them how to correct their mistake. That
8 happened from time to time. It didn't happen often. It was
9 certainly not his primary duty to do that. It just happened
10 that he did sometimes.

11 THE COURT: What evidence has been adduced about your
12 client's duties? You have your client's testimony?

13 MR. SCHWEITZER: His testimony and the employer's
14 testimony as well.

15 THE COURT: Who is the employer?

16 MR. SCHWEITZER: The employer who was deposed was Lulu
17 Chen Chiang.

18 THE COURT: That person's role was what when you say
19 employer?

20 MR. SCHWEITZER: That person was a manager at the Han
21 Dynast Pennsylvania location.

22 THE COURT: I remember having written a decision on
23 this earlier. Remind me at what locations Mr. Yeh, who is the
24 only plaintiff, worked?

25 MR. SCHWEITZER: He was in Pennsylvania. I think it

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1 was the Exton location and he was in New York at the Upper West
2 Side location.

3 THE COURT: Pennsylvania and New York. Just those
4 two?

5 MR. SCHWEITZER: Yes.

6 THE COURT: What years was he in New York?

7 MR. SCHWEITZER: He was in New York towards the very
8 end of his employment. I believe 2017.

9 THE COURT: Maybe that answers a question in the way
10 that was not made clear earlier. Does he have any basis for
11 suing under New York Labor Law for violations in Pennsylvania?

12 MR. SCHWEITZER: No.

13 THE COURT: So this case is not brought under
14 Pennsylvania Labor Law: right?

15 MR. SCHWEITZER: Yes, it is. It is brought under
16 Pennsylvania and New York and FLSA. The statute of
17 limitations --

18 THE COURT: I think I need a little better help from
19 you. Let's go back to the statute of limitations issue.

20 What is the statute of limitations under Pennsylvania
21 Labor Law?

22 MR. SCHWEITZER: Three years.

23 THE COURT: All right. In new York he only worked at
24 the tail end?

25 MR. SCHWEITZER: That's right.

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1 THE COURT: Why did you tell me that the New York
2 Labor Law would allow -- I asked you this question neutrally --
3 why did you suggest to me that the New York Labor Law would
4 allow him to reach back if in fact he only worked in New York
5 the tail end of that period?

6 MR. SCHWEITZER: I misremembered. I apologize.

7 THE COURT: Have you had any settlement discussions
8 with the defense?

9 MR. SCHWEITZER: No.

10 MR. NG: Your Honor, may I be heard on that?

11 THE COURT: Who spoke?

12 MR. NG: William Ng.

13 THE COURT: Let turn to you, Mr. Ng.

14 Go ahead. What did you have to say?

15 MR. NG: Your Honor, first a couple things. Your
16 Honor, the defendants had intended to move for summary judgment
17 in this case.

18 THE COURT: Well, you blew the deadline, too. That
19 was the purpose of this conference. Were you here at the
20 initial conference?

21 MR. NG: Yes, your Honor.

22 THE COURT: Do you remember my saying that two weeks
23 before this conference you were to submit a three-page letter
24 previewing any motion for summary judgment?

25 MR. NG: Your Honor, I am sure that is what you said.

1 THE COURT: Right. What was your reason for not doing
2 that?

3 MR. NG: Your Honor, there is no reason. We submitted
4 a status report and we are trying to address all the issues and
5 it was anticipated to be discussed during today's conference.

6 THE COURT: If you are going to move for summary
7 judgment, why shouldn't I reopen fact discovery if you are both
8 blowing the deadlines? Why shouldn't he get his depositions?

9 MR. NG: Your Honor, then we'll proceed with trial.

10 THE COURT: The problem is that neither of you is
11 taking the rules here seriously. I am kind of not really sure
12 what to say.

13 MR. NG: I understand, your Honor. I also wanted to
14 address when you asked counsel if we had settlement
15 discussions. Pursuant to your case management plan, Mr. Yam
16 from my office and Mr. Dong from Mr. Troy's office did have
17 that one-hour discussion pursuant to your case --

18 THE COURT: I am sorry. Mr. Dong is the one who was
19 just admitted to the bar?

20 MR. NG: I believe so, your Honor. Again, we didn't
21 know that at the time, though.

22 THE COURT: Look, when did you have that discussion?

23 MR. NG: They had it following the deposition of the
24 individual defendant.

25 THE COURT: When was that?

1 MR. NG: July 23rd.

2 THE COURT: Wait. Sorry. Who extended the depo
3 deadline for the individual defendant to occur on July 23rd?

4 MR. NG: No one, your Honor. We voluntarily produced
5 him. We were under no obligation to do so, but we did do so,
6 your Honor.

7 THE COURT: Were there dates set for the other two
8 defense witnesses' depositions?

9 MR. NG: We did not come to an agreement and we told
10 them that we took the position that discovery was closed. We
11 tried to work it out, but we could not.

12 THE COURT: You took the position that discovery was
13 closed but you produced your other defendant on July 23rd.

14 MR. NG: Yes, your Honor. Again, we were just trying
15 to be -- you know, in anticipation of this conference to try to
16 be as reasonable and pragmatic as we could.

17 THE COURT: Anticipation of this conference. The
18 purpose of the conference, I mean, neither of you seem to have
19 given any thought to the purpose of the conference. Plaintiff
20 sat on his rights to depose people. You have some notion of
21 moving for summary judgment on some ground, but didn't comply
22 with my individual rules or my statement at the initial
23 conference about a pre-motion letter.

24 MR. NG: I understand, your Honor.

25 THE COURT: On what ground were you going to move for

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1 summary judgment?

2 MR. NG: On the ground that the plaintiff was a
3 salaried head chef during his time at the Exton location.

4 THE COURT: What does the plaintiff say his
5 responsibilities were?

6 MR. NG: That he managed and supervised more than two
7 people during this time. He worked for approximately three
8 years in both the locations in Exton, Pennsylvania and I
9 believe for six weeks according to his testimony in the Upper
10 West Side.

11 THE COURT: Are you confident that the plaintiff's
12 testimony taken on its own terms would unambiguously establish
13 the elements of that exemption?

14 MR. NG: Yes, your Honor. After our review of the --
15 we understand just from the review of the case law it may be
16 difficult, but in this particular situation he had a number of
17 missions which led us to believe that we might have a
18 sufficient shot.

19 THE COURT: Well, a sufficient shot. I am not in the
20 time-wasting business.

21 MR. NG: I understand that, too, your Honor. I
22 understand that defendants didn't comply with your rule. We
23 understand that.

24 THE COURT: Look, I am also not going to waste my time
25 with a trial if you are confident that you have a winner on

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1 your hands. Is that what you are representing to me?

2 MR. NG: Yes, your Honor.

3 THE COURT: I will give you a week to submit a summary
4 judgment motion. I am doing this because frankly you
5 disrespected the rules here. Your client should not pay the
6 price for that. But if in fact there is a basis for summary
7 judgment, I will let you brief it. We need to move this on.

8 MR. NG: Your Honor, can we have two weeks, your
9 Honor?

10 THE COURT: Because?

11 MR. NG: Just because we need -- it's a large, large
12 record.

13 THE COURT: A large record. How many depositions,
14 two?

15 MR. NG: It would be two but --

16 THE COURT: What is the record?

17 MR. NG: It would be the plaintiff's deposition as
18 well as the defendant's deposition.

19 THE COURT: Have you gotten the deposition transcripts
20 from the court reporters yet?

21 MR. NG: Only for the plaintiff, not for the defense.

22 THE COURT: When are you likely to get that
23 transcript?

24 MR. NG: When we would receive it from plaintiff's
25 counsel or we can order our own copy.

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1 THE COURT: Plaintiff, do you have a copy of that
2 transcript yet?

3 MR. SCHWEITZER: That transcript has -- that
4 deposition took place last week.

5 THE COURT: I cannot hear mumbling. I need you to be
6 clear.

7 Do you have a copy of the transcript?

8 MR. SCHWEITZER: That deposition take place on July
9 23rd. We don't have a transcript yet. Furthermore, we have
10 requested a copy of the plaintiff's deposition transcript but
11 haven't received it.

12 THE COURT: That's all fine. That can be
13 accomplished. If he has a copy of it, I can direct him, and I
14 am doing it now, to get it to you tonight.

15 Email it to him tonight.

16 MR. NG: Correct, your Honor.

17 THE COURT: The defendant's deposition, you are the
18 master of having taken that deposition. When will you be
19 getting the transcript from the court reporter?

20 MR. SCHWEITZER: We haven't gotten it from the court
21 reporter. I anticipate within the next week or so. That said,
22 it has been argued that the plaintiff's admission standing
23 alone suffice to get summary judgment.

24 THE COURT: To get summary judgment or to deny summary
25 judgment? You are not proposing to move for summary judgment?

1 MR. SCHWEITZER: No, we're not proposing to move for
2 summary judgment. I am saying that mr. Ng has represented to
3 this Court that the plaintiff's admissions are sufficient for
4 his motion.

5 THE COURT: Right. The issue is whether there is a
6 material dispute on the facts. The evidence has to be viewed
7 in the light most favorable to the nonmovant. If he is moving
8 for summary judgment on the grounds that the undisputed facts
9 establish that this exception applies, it is likely that a
10 central issue is going to be what your client has to say about
11 that. I asked him therefore whether your client's deposition
12 testimony in his view would essentially establish the elements
13 of that exemption. He says yes and you say no.

14 What is it about your client's testimony -- just give
15 me a quick synopsis -- that if credited would undermine a claim
16 that the executive exemption applies?

17 MR. SCHWEITZER: My client has described his primary
18 job duty as being cooking. He described any other duties as
19 being exceptional or rare. He denied flatout having the power
20 to hire or fire anybody. He denied having any opinions on who
21 to hire and fire. That he may have, that they were credited or
22 they were respected. He doesn't fall within the executive
23 exemption.

24 THE COURT: As to the factual propositions that Mr.
25 Schweitzer just recited, Mr. Ng, he is accurate or inaccurate

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1 in summarizing those aspects of his client's testimony?

2 MR. NG: We believe he is inaccurate.

3 THE COURT: You believe that the transcript will
4 demonstrate that Mr. Schweitzer misdescribed those aspects of
5 the testimony?

6 MR. NG: That's correct, your Honor.

7 THE COURT: What are the things that the plaintiff
8 said? Put aside what your defense witness said or undeposed
9 employees would say. What is it that the plaintiff said that
10 you believe will establish the executive exemption.

11 MR. NG: Mr. Yeh was hired as initially the deputy
12 head chef where he was in charge of four people. The head chef
13 left within a matter of weeks. He became the head chef. He
14 had the keys to the restaurant. He directed not only the two
15 other chefs or three other chefs there. He directed the
16 dishwasher.

17 In addition, the mere fact that he was cooking does
18 not preclude the exemption. He also made over the salary
19 threshold for Pennsylvania. He had recommendations to hire and
20 fire people. He identified those individuals. He hired folks
21 from the temporary staffing agency that the restaurant used.

22 THE COURT: Does he admit all these things?

23 MR. NG: Yes, your Honor.

24 THE COURT: Look, plaintiff, I want you to get that
25 deposition transcript from the court reporter right away.

1 MR. SCHWEITZER: Yes, your Honor.

2 THE COURT: Look, Mr. Ng, I will give you two weeks
3 from tomorrow -- today is August 1 -- August 16th to file your
4 motion for summary judgment. I understand it is going to be
5 limited to the ground that the exemption applies?

6 MR. NG: That is correct.

7 THE COURT: Not any other ground?

8 MR. NG: No.

9 THE COURT: Mr. Schweitzer, how long do you want for
10 your opposition?

11 MR. SCHWEITZER: Two weeks.

12 THE COURT: August 30th.

13 Mr. Ng, do you have Labor Day vacation plans?

14 MR. NG: Yes, your Honor.

15 THE COURT: I will give you two weeks. I will give
16 you until September 12th. August 16th, August 30th,
17 September 12th for the briefing.

18 I will then resolve the summary judgment motions. And
19 if the summary motion is granted, that would appear to dispose
20 of the case. If the summary judgment motion is denied, the
21 decision I expect will then direct the submission of a joint
22 pretrial order promptly and get us ready for trial.

23 Let me ask you, Mr. Schweitzer, is there any value to
24 having settlement discussions while the summary judgment motion
25 is underway or ought that wait until after?

1 MR. SCHWEITZER: I think there would be value in
2 having settlement discussions while it is underway.

3 MR. NG: We're always interested in settlement
4 discussions.

5 THE COURT: Mr. Ng, the scale of this case, given
6 plaintiff's gross inattention to discovery obligations, is
7 going to be limited to Mr. Yeh. If someone wants to bring
8 suit, they are at liberty to do so. I cannot saddle the other
9 employees with this level of discovery inattention. Under the
10 circumstances here, you have been given a gift insofar as your
11 adversary has effectively forfeited the right to claim
12 capability of representing a broader class. There would be
13 much wisdom in my judgment in your considering at this point
14 whether to seriously engage in settlement discussions.

15 I have no idea whether or not the executive exemption
16 applies. I am assuming as an officer of the court that you
17 believe that the plaintiff's deposition not only supports your
18 claim but in a way that leaves no material disputes of fact.
19 Those exemptions are hard to prove on summary judgment. I have
20 had other exemptions litigated before. That's an uphill climb.
21 I am going to let you try to do it, but my strong advice is to
22 discuss settling the case sooner rather than later --
23 presumably next week.

24 Will you agree to do that?

25 MR. NG: Yes, your Honor. Just so your Honor knows,

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1 we did offer of judgment and then again we spent an hour with
2 opposing counsel to try to settle.

3 THE COURT: Look, I want, Mr. Ng, you personally to
4 speak with Mr. Schweitzer personally next week about
5 settlement. I don't want somebody else there. I want somebody
6 who has got familiarity with the case and the experience.

7 Mr. Schweitzer, I gather you have more experience than
8 the newcomer your firm?

9 MR. SCHWEITZER: Yes, your Honor.

10 THE COURT: Look, I want the two of you to take
11 ownership of this. It is my hope together you will find a way
12 to resolve this matter. If it is not resolved, I will resolve
13 summary judgment as promptly as I can.

14 MR. NG: Thank you, your Honor.

15 THE COURT: Look, there is an outstanding issue about
16 the various requests for sanctions and alike pursued by defense
17 against the plaintiff. I am going to deny that in an exercise
18 of discretion. I think plaintiffs could have handled the issue
19 better with respect to the new employee. The short answer is
20 courts are -- and I certainly am -- willing to admit somebody
21 pro hac vice under an appropriate showing of qualification. It
22 looks to me as if what happened was you were short-handed and
23 found somebody who had just pass the bar to appear.

24 Has that person been admitted in New York?

25 MR. SCHWEITZER: His application is pending. We

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1 expect him to be admitted in New York within the month.

2 THE COURT: I am not going to saddle you or that young
3 lawyer with any unfortunate mark here. In an exercise of
4 discretion I am not doing anything about that, but I would urge
5 to you to be more punctilious in the future.

6 MR. SCHWEITZER: Yes, your Honor.

7 THE COURT: I think there is also to be candid a
8 substantial question here about whether that person ought to
9 have been the one defending your client's deposition. That
10 person I take it hadn't been actively working on the case but
11 was called in because the people who are familiar with the case
12 were busy; right?

13 MR. SCHWEITZER: Inescapable obligations, yes, your
14 Honor.

15 THE COURT: I used to be a practicing lawyer. A
16 corporate client would never put up with sending in somebody
17 who was fresh off taking the bar and who didn't have previous
18 familiarity with the case to defend the deposition of the named
19 plaintiff. It would be unthinkable if you had a consumer of
20 legal services. They would be appalled by that. You need to
21 treat your individual clients with the same level of dignity
22 and respect as somebody who is a more serious consumer.

23 Just because Mr. Yeh presumably has limited experience
24 dealing with lawyers, doesn't mean that you can send somebody
25 to defend his deposition who is unfamiliar with the case, new

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1 to the case, new to the practice. It is just wrong. If I were
2 Mystery A and I were a sophisticated consumer, I would be
3 distressed that happened. You need to do better.

4 That is one of the other data points that leads me to
5 in an exercise of discretion tell you that I cannot grant the
6 motion for conditional certification. I am not going to create
7 a written decision about it. It seems to me under these
8 circumstances that I am seeing here, I cannot in good conscious
9 saddle other potential members of the Han Dynasty restaurant
10 with the representation by the Troy Law Firm. There has been
11 inattention to discovery deadlines. There has been a
12 forfeiting of the ability to take depositions of what may be
13 important defense witnesses and there is the sending out to the
14 named plaintiffs the one plaintiff's deposition somebody with
15 unfamiliarity with the case who is green in the practice of
16 law.

17 Under those circumstances, I would be ill serving the
18 interests of the hypothetical other plaintiffs to appoint the
19 Troy Law Firm as counsel for such people. They are at liberty
20 to pursue their own claims. If they choose to hire you, I
21 cannot stop them; but I am not going to facilitate that process
22 because what I am seeing here is disquieting.

23 MR. SCHWEITZER: Understood.

24 THE COURT: I will issue an order that simply denies
25 the reasons stated on the record and leaves it at that.

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MR. SCHWEITZER: I appreciate that, your Honor.

THE COURT: I don't think there are any other disputes that need to get resolved. I have taken care of the issue about the junior lawyer. The discovery disputes are muted by the fact that the discovery deadline lapsed. I have set a schedule for summary judgment.

Is there anything else for me to address?

MR. SCHWEITZER: No, your Honor.

THE COURT: Defense?

MR. NG: No, your Honor.

THE COURT: In the next week I want the two of you to talk settlement. I want a joint letter from you due by the end of next Friday confirming that you have spoken about settlement. It is my hope you will reach an agreement.

Mr. Ng, I need to tell you that in the event that your summary judgment motion were unsuccessful, you are then dealing with a very real trial here. Trials are expensive and the numbers that Mr. Schweitzer is speaking about are formidable even within a time period framed by the Pennsylvania statute of limitations, which appears to be the one applicable to the earlier time period. We're talking about an employee who has a decidedly higher than usual base wage rate for people in the food services industry. It may or may not be that is light support for a claim of the executive exception. It is not that high of a rate so I don't know that is the case. Looking at

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1 the numbers that have been proffered to me if Mr. Schweitzer is
2 correct, there are formidable damages here relative to single
3 employee FLSA New York Labor Law restaurant cases. Your client
4 would do very well if given the prospect of a trial here and
5 given the implications of those numbers to take settlement
6 discussions very seriously and approach them in a flexible
7 spirit.

8 Understood?

9 MR. NG: Understood, your Honor.

10 THE COURT: Thank you. We stand adjourned.

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